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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5th DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

Writ Petition No.26029/1994

1. Shri Iragouda Siddagouda  
Patil, major,  
Occ: Agriculture,  
Resident of Ankali,  
Taluk: Hukeri,  
District: Belgaum.

2. Shivagouda Siddagouda  
Patil, major,  
Occ: Agriculture,  
Resident of Ankali,  
Taluk: Hukeri,  
District: Belgaum.

.. Petitioners

(By Sri B.S.Kamate,  
Advocate)

Vs.

1. The Asst. Commissioner,  
Belgaum Sub-Division,  
Belgaum.

2. The Tahsildar,  
Hukeri,  
District: Belgaum.

3. Shankar Mallappa Badkar,  
major, Agriculturist,  
Resident of Ankali,  
Taluk: Hukeri,  
District: Belgaum.

.. Respondents

(By Sri B.E.Kotian,  
Addl. Govt. Advocate  
for Respondents 1 & 2;  
Respondent-3 served)

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Writ Petition filed under Articles 226 and 227 of the Constitution of India with an affidavit praying for the quashing of the order dated 19-7-1994 passed by the first respondent vide Annexure-B, etc.

This petition coming on for preliminary hearing in 'B Group' before Court this day, the Court made the following:

**O R D E R**

The petitioners, in this petition, have called in question the correctness of the order dated 19th of July 1994, a copy of which has been produced as Annexure-B, passed by the first respondent confirming the order dated 24th of May 1993, a copy of which has been produced as Annexure-A, passed by the second respondent forfeiting the land measuring 1 acre in R.S.No.71/33 situated at Ankali village, Hukeri Taluk, Belgaum District, on the ground that the petitioner entered into an agreement to sell the said <sup>land</sup> to the third respondent in contravention of the terms of the grant made in favour of the petitioners.

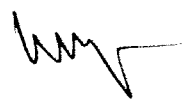
2. Sri B.S.Kamate, learned Counsel appearing for the petitioners, challenged the orders impugned mainly on three grounds. Firstly, he submitted that the orders impugned are not

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speaking orders and on that ground, the orders impugned are liable to be quashed. Elaborating this submission, he pointed out that since the orders impugned seriously affect the property rights of the petitioners in respect of the land in question, respondents 1 and 2 ought to have given reasons in support of their finding that the petitioners have either sold or entered into an agreement to sell, the land in question to the third respondent. He further submitted that except the conclusion reached by respondents 1 and 2 that the petitioners have entered into an agreement to sell the land in question to the third respondent, there is no ~~other~~ consideration of material by respondents 1 and 2 with regard to the question as to whether the petitioners have actually agreed to sell or sold the land in question to the third respondent. Secondly, he submitted that there is absolutely no evidence on record to show that the petitioners have, at any time, entered into an agreement to sell the land in question to the third respondent. He submitted that the entry, referred to in 'other rights column'



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showing the name of the third respondent has been seriously disputed by the petitioner. It is his further submission that even according to the finding recorded by respondents 1 and 2, the petitioners continue to be in possession of the land in question. For all these reasons, he submits that the impugned orders are liable to be quashed. He further pointed out that the petitioners are very poor persons having only 1 acre of land, which is the subject matter of dispute in this petition, which has been granted to them by the State as provided under the provisions of the Karnataka Village Offices Abolition Act. Finally, Sri Kamate submitted that even if there is an agreement to sell executed by the petitioners in favour of the third respondent agreeing to sell the land in question, such agreement will not contravene Section 5(3) of the Karnataka Village Offices Abolition Act since it will not amount to transfer under the provisions of the Transfer of Property Act.

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3. Sri B.E.Kotian, learned Additional Government Advocate appearing for respondents 1 and 2, tried to support the orders impugned. He submitted that since both respondents 1 and 2 have concurrently held that the petitioners have entered into an agreement to sell the land in question in favour of the third respondent, this is not a fit case for interference by this Court in exercise of its jurisdiction either under Article 226 or under Article 227 of the Constitution of India.

4. I find considerable force in the submission made by Sri Kamate. As can be seen from the orders impugned, they are not speaking orders. The finding recorded by respondents 1 and 2 is not based on any material to show that the petitioners have either entered into an agreement to sell or actually sold the land in question to the third respondent. Even according to the finding recorded by respondents 1 and 2, the petitioners continue to be in possession of the land in question. Only on the basis of the disputed entry showing the name of the

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third respondent in the 'other rights column', it was not permissible for respondents 1 and 2 to take the view that the petitioners have entered into an agreement to sell the land in question to the third respondent. Further, it is also the case of the petitioners that except the land in question, the petitioners have no other land. In view of this, I find it unnecessary to consider the third submission made by the learned Counsel for the petitioners.

5. In the light of the discussion made above, I am of the view that the orders impugned are liable to be quashed.

6. Accordingly, the impugned orders Annexures-A and B passed by respondents 2 and 1 respectively are hereby quashed.

7. The writ petition is allowed. Rule is issued and made absolute.

8. Sri B.E.Kotian, learned Addl. Government



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Advocate, is permitted to file his memo of appearance within four weeks from today.

Sd/-  
JUDGE



ANB.